place 'without prejudice to the question of liability for interest' for late completion. That agreement, it was asserted, bound the defendants, and they were obliged to complete on the basis of it.

I do not agree. The course taken by counsel for the defendants was pressed upon him by me in the hope that an accommodation might be reached between the parties concerning completion, notwithstanding my virtual conclusion that the caveat should be discharged. What followed those directions cannot be said to have amounted to a freely negotiated agreement. When the parties appeared before me again a week later, new counsel for the defendants made it plain that his instructions were to argue that the defendants were under no obligation to complete the sale.

The present position of the parties

In my judgment, for the reasons stated, the defendants are not obliged to complete the transaction, and they are entitled, by virtue of condition 29(4)(b)(i) of the Law Society Conditions, to forfeit the deposit paid by the plaintiff. Accordingly, I make no orders on this originating summons save an order that the costs of these proceedings be taxed and paid by the plaintiff.

Application dismissed.

Solicitors: *Pala Krishnan & Partners; Chong Yeo & Partners.*

Reported by *Terence Tan Bian Chye*

Peters Edition Ltd v Renner Piano Co

Associated Board of the Royal Schools of Music v Renner Piano Co

HIGH COURT (SINGAPORE) — SUIT NOS 103 OF 1989 AND 104 OF 1989
YONG PUNG HOW J
24 NOVEMBER 1989

Civil Procedure — Anton Piller order — Genuine and pirated goods mixed — Plaintiff seizing both — Whether plaintiff under a duty to return genuine goods — Whether plaintiff had good reason for not returning goods — Limits of Anton Piller order to be meticulously obeyed

The defendants in these two actions are local retailers of musical instruments and publications. The plaintiffs are both music publishers in the United Kingdom. The defendants have been long standing customers of both plaintiffs and have been making frequent purchases from them. In both suits, the respective plaintiffs alleged against the defendants the infringement of copyright and passing off in various books ('the works'). Each suit therefore claimed a declaration of infringement of copyright; an injunction to restrain the defendants; an order for delivery up for destruction; an inquiry as to damages or an account of profits; and costs.

The defendants admitted that they had infringed the copyright of the plaintiffs and consented to judgment being entered against them, with an inquiry to be held to quantify damages. The dispute in the present appeals, however, is in the use by each of the plaintiffs of the Anton Piller order procedure, and the subsequent developments which have flowed from it. On the instructions of the plaintiffs' solicitors, a private investigator from a security firm made trap purchases of a copy each of four of the works. The copies were sent back to the United Kingdom for tests to be done on them. When the writ was filed, the plaintiffs made an ex parte application by way of summons-in-chambers for an Anton Piller order. Upon the plaintiffs' undertaking by their counsel to keep in safe custody any articles which might be taken and to pay damages, if later found liable, the defendants were required, inter alia, to permit entry and search of their premises, and the identification and removal of any unauthorized reproductions of the works which might be found. A considerable quantity of material was then seized and removed, to be kept in safe custody by the plaintiffs' solicitors. The defendants were unhappy as they believed that genuine copies of the works, which they had bought from the plaintiffs and for which they had paid, had also been taken away. Following a joint inspection of the seized items by both parties, the defendants took out a summons-in-chambers for an order that the plaintiffs release and return unconditionally to them those musical publications in the container which were set out in the schedule to the summons, which they claimed to be copies of the works for which they had paid.

Held, allowing the defendants' application:

(1) The Anton Piller order allowed the plaintiffs to remove only unauthorized reproductions of the works. In this case, the defendants had been purchasing genuine copies of the works from the plaintiffs for some 20 years, and the stocks in their premises included both such genuine copies of the works and unauthorized reproductions. Some bundles of allegedly unauthorized reproductions were even taken away without their being unpacked for examination. In the result, it was an inescapable inference that at least some copies of the works were also removed. This much was in fact admitted by the chairman and managing director of the plaintiffs. In the court's opinion, the sweeping powers accorded to plaintiffs by Anton Piller orders, which are so freely granted by the courts, impose on plaintiffs a serious responsibility to see that the terms of the orders are strictly adhered to and that there is no breach of any of the terms. The plaintiffs must ensure that only unauthorized reproductions are removed and no more. This may well impose a heavy burden on plaintiffs in some cases, as in this case, where authentic publications in the premises are mixed with unauthorized reproductions, and identification and separation may no longer be a simple matter.

(2) The plaintiffs' only argument against the release and return of any of the seized materials was that they constituted the evidence which the plaintiffs needed to prove their case. This was not an argument which found any favour with the court since the defendants in this case had already admitted liability and consented to judgment being entered against them.

(3) If what the plaintiffs really meant was that the retention of all the seized materials would be necessary to enable them to quantify damages, this appeared to the court to be a totally unrealistic approach towards this particular problem. The prayers in their own statement of claim had asked for damages, or alternatively an account of profits and the court could not see, in the absence of any explanation, how unsold materials could help them.

(4) In fact, the seized materials should have been retained by the plaintiffs for no more than the time required to enable their solicitors to complete a proper inventory to replace the crude tally sheet which in July 1989 and before judgment was entered, they were still exhibiting to their affidavits.

(5) The plaintiffs disclosed for the first time that their main concern was to prevent pirated or unauthorized reproductions from being reintroduced into the Singapore market. Preventing the possible reintroduction of unauthorized reproductions into the Singapore market was a more relevant consideration. However, there did not appear to the court to be any risk of the defendants doing this, in view of their ready admissions of liability and the existence of the injunctions which the Singapore courts have shown themselves competent to enforce.

(6) The court therefore made an order that the musical publications set out in the schedule be released and returned to the defendants and refused an application for a stay of execution.

[*Editorial Note*: The plaintiff in Suit No 104 of 1989 has appealed to the Court of Appeal vide Civil Appeal No 105 of 1989. By an order of court dated 27 October 1989, the Court of Appeal, presided by Coomaraswamy J, granted the plaintiff's application for a stay of execution of the order granted by Yong Pung How J.]

Case referred to

1 *Columbia Picture Industries* v *Robinson* [1986] FSR 367 (refd)

Anthony Lee (*Chew Kherk Ying* (*Miss*) with him) for the plaintiffs.

HE Cashin (*Clive Heng* with him) for the defendants.

Cur Adv Vult

Yong Pung How J: Renner Piano & Co, who are local retailers of musical instruments and publications, are the defendants in two separate suits, Nos 103/89 and 104/89, commenced against them in January 1989 by Peters Edition Ltd and The Associated Board of the Royal Schools of Music, who are both music publishers in the United Kingdom. The defendants have been long standing customers of both plaintiffs and have been making frequent purchases from them. In both suits, the respective plaintiffs alleged against the defendants the infringement of copyright and passing off. Each suit therefore claimed a declaration of infringement of copyright; an injunction to restrain the defendants; an order for delivery up for destruction; an inquiry as to damages or an account of profits; and costs. Both plaintiffs are represented by Allen & Gledhill and the defendants are represented in both suits by Murphy & Dunbar. As the principles of law and the material facts in both suits were on identical lines up to a point, proceedings in the two suits have been taken together, by consent, whenever possible. To avoid unnecessary repetition, I will refer in these grounds of decision only to the events and developments in Suit No 103/89.

The defendants have not really contested the claims. (In Suit No 103/89, they admitted that they had infringed the copyright in the plaintiffs' works, and were liable to the plaintiffs in damages flowing directly and naturally from their infringement, but not in aggravated or additional damages. On 20 September 1989, they consented to judgment being entered against them, with an inquiry to be held to quantify damages. In Suit No 104/89, the statement of claim and the defence were amended, and no judgment has been entered.) What has led to dispute, and directly to the present appeals, however, has been the use by each of the plaintiffs of the Anton Piller order procedure, and the subsequent developments which have flowed from it.

The execution of an Anton Piller order can hardly ever be a pleasant affair. In our Singapore environment, all available evidence to date indicates that the intrusion is invariably a traumatic experience for the hapless defendants and can be bitterly resented, whatever the surface appearances may be. This is especially so when local retailers with long-established businesses quickly convince themselves that the law is unnecessarily helping their foreign suppliers to trample over them. Never mind that they have infringed copyright and may very well deserve to be penalized; theirs has been a way of life in their type of business for many years before the copyright laws became more effectively enforced recently, with the additional availability of Anton Piller remedies, and being brought back to earth is not welcome to them. The instant case, unfortunately, was no exception.

In the case of Suit No 103/89, the plaintiffs had been concerned since about November 1986 that the defendants might be selling pirate editions of a series of music books entitled 'Read and Play' ('the works') in which they owned the sole and exclusive copyright. Their concern was not resolved by their correspondence with the defendants in 1987 and early 1988. On 17 August 1988, on the instructions of their solicitors, a private investigator from a security firm made trap purchases of a copy each of four of the works. The copies were sent back to the United Kingdom for tests to be done on them. With one minor exception in 1974 which is not relevant, the works have only been printed for the plaintiffs by two printing firms, Halstan & Co Ltd and Caligraving Ltd; and printing has been done since 1980 only on a special type of paper manufactured for the plaintiffs by Caldwells Mill in Scotland. Two of the four copies were identified by Caldwells Mill, after scientific analysis in their scientific laboratories, to be on paper which was not manufactured by them; after independently examining these four copies, Halstan & Co Ltd and Caligraving Ltd were also able to confirm that the same two copies had not been printed or bound by them. What I think is an important consideration in this case is that it is clear from the detailed reports of Halstan & Co Ltd, Caligraving Ltd and Caldwells Mill that the process of distinguishing between copies of the works and pirated editions is not so simple, and depends for its absolute reliability on much more than a cursory examination.

On 17 January 1989, when the writ was filed, the plaintiffs made an ex parte application by way of summons-in-chambers for an Anton Piller order. The Anton Piller order sought was in wide terms, and was obtained and executed immediately on the same day. Upon the plaintiffs' undertaking by their counsel to keep in safe custody any articles which might be taken and to pay damages, if later found liable, the defendants were required, inter alia, to permit entry and search of their premises, and the identification and removal of any unauthorized reproductions of the works which might be found. The identification work was done by, and under the supervision of, a Mr Dyer, the chairman and managing director of the plaintiffs, who was in Singapore for the purpose. A considerable quantity of materials was then seized and removed, to be kept in safe custody by the plaintiffs' solicitors.

The defendants were unhappy about what had happened; in particular, they believed that genuine copies of the works, which they had bought from the plaintiffs and for which they had paid, had also been taken away. They took stock of the position and on 13 April 1989 their solicitors wrote to the plaintiffs' solicitors to arrange a joint inspection of the seized materials. They wanted to verify what had been removed and to satisfy themselves that the plaintiffs had taken away only unauthorized reproductions of the works. On 3 May 1989, the joint inspection took place at the warehouse in which the seized materials had been stored by the plaintiffs' solicitors. The defendants were represented by two partners and two clerical assistants who were accompanied by a partner of their solicitors; the plaintiffs were represented by a legal assistant from their solicitors and by one of the investigators who had made the trap purchases. The defendants alleged that their representatives found the seized materials piled up inside a container in a haphazard and disorderly fashion, and that they then re-sorted them into two separate piles, of copies of the works, and of unauthorized reproductions respectively. Following the joint inspection, the defendants took out a summons-in-chambers on 30 May 1989 for an order that the plaintiffs release and return unconditionally to them those musical publications in the container which were set out in the schedule to the summons, which they claimed to be copies of the works for which they had paid.

The summons first came before me on 1 September 1989. It was adjourned as the parties were attempting to reach a settlement. It came before me again on 20 September 1989 and, after hearing counsel, I made an order that the musical publications set out in the schedules be released and returned to the defendants. I refused an application for a stay of execution.

The Anton Piller order of 17 January 1989 allowed the plaintiffs to remove only unauthorized reproductions of the works. If such unauthorized reproductions were all that the defendants had in their possession, there might have been no problem for the plaintiffs in executing the order. In this case, however, the defendants had been purchasing genuine copies of the works from the plaintiffs for some 20 years, and the stocks in their premises included both such genuine copies of the works and unauthorized reproductions. It was clear from the somewhat different accounts of the searches at various premises of the defendants that the process of identification which was used was prone to error. Some bundles of allegedly unauthorized reproductions were even taken away without their being unpacked for examination. In the result, it was an inescapable inference that at least some copies of the works were also removed. This much was in fact admitted by Mr Dyer, the chairman and managing director of the plaintiffs. In his affidavit of 10 July 1989, which was filed in opposition to the summons, he averred that he had sifted out the counterfeit copies with great care and believed that 'the accuracy of my work probably exceeds 95% in view of the vast amount of material examined'.

In my opinion, the sweeping powers accorded to plaintiffs by Anton Piller orders, which are so freely granted by our courts, impose on plaintiffs a serious responsibility to see that the terms of the orders are strictly adhered to and that there is no breach of any of the terms. If unauthorized reproductions are allowed to be removed, the plaintiffs must ensure that only unauthorized reproductions are removed and no more: they cannot take any comfort from the belief that they have executed the order with great care and have probably been more than 95% accurate in their work of removal. This may well impose a heavy burden on plaintiffs in some cases, as in this case, where authentic publications in the premises are mixed with unauthorized reproductions, and identification and separation may no longer be a simple matter. Nevertheless, Anton Piller orders are so draconian in nature and extent, that, if they are not to become instruments of oppression, their limits must be meticulously obeyed and enforced.

The plaintiffs' solitary argument against the release and return of any of the seized materials was that they constituted the evidence which the plaintiffs needed to prove their case. This was not an argument which found any favour with me at all. The defendants in this case had already admitted liability in principle and on the same day, 20 September 1989, consented to judgment being entered against them. If what the plaintiffs really meant was that the retention of all the seized materials would be necessary to enable them to quantify damages, this appeared to me to be a totally unrealistic approach towards this particular problem. The prayers in their own statement of claim had asked for damages, which are based upon the loss of sales of their own works, or alternatively an account of profits, which are based on profits made by the defendants; I could not see, in the absence of any

explanation, how unsold materials could help them. In fact, the seized materials should have been retained by the plaintiffs for no more than the time required to enable their solicitors to complete a proper inventory to replace the crude tally sheets which in July 1989 and before judgment was entered, they were still exhibiting to their affidavits. On this, see *Columbia Picture Industries* v *Robinson*[1] per Scott J at p 440.

Before appealing against my order of 20 September 1989, the plaintiffs sought the opportunity to present further arguments under s 34(2) of the Supreme Court of Judicature Act (Cap 332, 1985 Ed). Before the further arguments could be heard, however, I was informed that the seized materials in the warehouse had been removed from their original container and placed in another location, and that they were no longer in the separate piles into which they had been re-sorted at the joint inspection held on 3 May 1989. While the removal had been done by the warehousemen, from a continuation without the knowledge of the plaintiffs' solicitors, the episode only brought home more clearly the risk, if the seized materials continued to be with the plaintiffs' solicitors, of a breach of the plaintiffs' undertakings with regard to safe custody.

At the hearing of the further arguments on 3 October 1989, the plaintiffs only sought a variation of my previous order of 20 September 1989. They offered two alternatives: to pay the defendants $4,000 for the seized materials ordered to be returned; or to replace them with identical publications from their own stocks free of charge. They still maintained that the seized materials were necessary as evidence, but now they disclosed for the first time that their main concern was to prevent pirated or unauthorized reproductions from being reintroduced into the Singapore market. It was still not explained in these further arguments how unsold copies of counterfeit materials could be used as evidence to quantify damages. Preventing the possible reintroduction of unauthorized reproductions into the Singapore market was a much more relevant consideration. However, there did not appear to me to be any risk of the defendants doing this, in view of their ready admissions of liability and the existence of the injunctions which the Singapore courts have shown themselves competent to enforce.

The plaintiffs have already had judgment entered in their favour, and in my judgment they should get down to having their damages quantified, and finalizing this matter. I therefore made a supplemental order for the parties to arrange a second joint inspection within 28 days, so that the publications to be returned under the order of court of 20 September 1989 could be reidentified and the orders carried out, with liberty to apply.

Application allowed.

Solicitors: *Allen & Gledhill; Murphy & Dunbar.*

Reported by *Terence Tan Bian Chye*

Lee Wee Hiong & Anor (administrators of the estate of Lee Liak Meng (deceased)) & Ors v Victor Koh Ah Sai & Ors

HIGH COURT (SINGAPORE) — SUIT NO 164 OF 1983
YONG PUNG HOW J
13 NOVEMBER 1989

Damages (Personal Injury or Death) — Loss of life — Estate's loss of earnings claims — CPF savings — Rate to be used — Dependency claims — Whether CPF contributions of deceased had he lived should be included — General damages of injured party — Claim for anxiety neurosis — Civil Law Act (Cap 43, 1985 Ed), ss 8, 9 & 12

A motor car driven by the first defendant ran into and knocked down the deceased and the second and third plaintiffs who were all standing on the divider, waiting to cross the road. The first defendant was trying to overtake another motor car driven by the second defendant, which was itself moving out from its lane to avoid a road sweeping vehicle driven by a servant or agent of the government of the Republic of Singapore. Arising from the accident, the widow of the deceased and her brother as administrators of the estate of the deceased, together with the second and third plaintiffs, brought an action against the first defendant for damages. The second and third plaintiffs claimed damages for personal injuries and consequential loss. The second and third defendants were joined as parties by an order of court.

Before the hearing commenced, liability was admitted by the first defendant as to 65% and by the second defendant as to 35%. In the course of the hearing, the parties also agreed on a multiplier of 10 to be applied in determining lost years' earnings, and on the following amount of damages:

a) $7,000 for loss of expectation of life;
b) $5,000 for funeral expenses;
c) $750 for cost of letters of administration;
d) $3,000 general damages and $100 special damages for the second plaintiff;
e) $8,200 special damages for the third plaintiff.

At the date of his death, the deceased was 46 years old, and was in good health. He had worked for bus companies. As a ticket inspector in 1975, his earnings had been $345 per month. He had risen to be a chief ticket inspector in 1978 with earnings of $660 per month, and at the date of his death he was earning a gross salary of $1,020.43 per month.

Held:

(1) The cause of action having arisen in 1981, the claim for the estate of the deceased was made under s 8 of the Civil Law Act (Cap 43, 1985 Ed) ('the Act') before the coming into force of the 1987 amendments.

(2) In assessing the damages to be awarded, the agreement on a multiplier of 10 reduces the problem of determining the loss of future earnings during the 'lost years' to a narrower problem of determining the multiplicand. By its very nature it does not readily allow itself to be an exercise in mathematical precision. What is needed is a fair and reasonable assessment of what the net future earnings might be, bearing in mind that earnings are subject to all the vagaries of life.

(3) A net income per year of $19,000 would be fair, after adding the employer's Central Provident Fund ('CPF') contributions and after making allowances and provisions for income tax.